CF0000061607

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 484 OF 1997
[Criminal Appeal under Section 374(2) Cr.P.C.]

APPELLANT: Accused (In Jail)

Dasuwa alias Kalluwa Korwa son of Debba- Chamru aged 40 years resident of Village- Maltipur Police Station-Kamleshpur, District-Sarguja (M.P.)

V E R S U S

RESPONDENT: The State of Madhya Pradesh, through Police Station Kamleshpur District-Sarguja.

CONVICTION:	SENTENCE:
U/s 302 of I.P.C.	Life long Imprisonment

3054
Filed on 1.3.97
by Shri P.S. Thakur
Advocate
A/b 1.3.97
R.A.R.

CRIMINAL APPEAL U/S 374(2) Cr.P.C.

Arisi out of the Judgment and order of conviction passed on 8.1.1997 by Shri J.K.S. Rajpoot Sessions Judge Ambikapur District-Sarguja in Session Trial No. 311/97 State of M.P. V/s. Dasua alias Kalluwa Korwa.

Being aggrieved by the judgment and order of conviction & Sentence dated 8.1.97 given by Sessions Judge Ambikapur the appellant prefers this appeal on the following facts and grounds:

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 484/1997

Dasuwa alias Kalluwa Korwa

Vs.

State of Madhya Pradesh (Now Chhattisgarh)

Judgment

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 484/1997

Dasuwa alias Kalluwa Korwa

Vs.

State of Madhya Pradesh (Now Chhattisgarh)

Coram :- Hon'ble Shri Fakhruddin &
Hon'ble Shri Dilip Raosaheb Deshmukh, JJ.

Present :- Shri J.S. Baraik, Counsel for the appellant.
Shri M.P.S.Bhatia, Panel Lawyer for the State.

Judgment

(Delivered on 27-09-2005)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 08th January, 1997 in Sessions Trial No. 311/95 by Shri J.K.S.Rajput, Sessions Judge, Ambikapur, District-Sarguja whereby the appellant was convicted under Section-302 of I.P.C. for committing murder of his wife Sukwari Bai and was sentenced to imprisonment for life.

2. The factual matrix in brief is that on 27-08-1995, the appellant along with his wife Sukwari Bai had gone to the Tibbati Camp Kunia for selling country liquor. While returning Sukwari Bai was carrying about one & half K.G. rice with her. On way the rice fell down. There was a quarrel between the appellant and Sukwari Bai. The appellant assaulted Sukwari Bai by kicks and fists. Sukwari Bai fell unconscious. The appellant brought her home. She succumbed to the injuries. The appellant informed Sonu about the death of his wife whereupon Sonu,

(45)

PW-2 lodged F.I.R. in Police Station-Kamleshwarpur on 28-08-1995 at about 4 P.M. Head Constable Kumbkaran Rajwade, PW-7 wrote Merg intimation vide Ex.P-5 and reached the spot on the same day and held inquest vide Ex.P-8. The dead body of Sukwari Bai was sent for post-mortem. Dr. R.S. Singh PW-5, who conducted the autopsy found the following injuries on Sukwari Bai :-

1. Contusion size 8 cm. x 4 cm. irregular shape on left cheek, reddish black coloured.
2. Left eye upper lid is congested.
3. Contusion size 5 x 5 cm. irregular in shape, bluish black, skin supine on forehead 2 cm above middle of left eyebrow.
4. Contusion with swelling on left side of forehead just anterior to left ear, multiple in number, irregular in shape.
5. Contusion size 3 cm x 1 cm on neck lower posterior side with bluish colouration.
6. Lacerated wound 3 x 3 cm on outer side of left ankle joint.
7. Contusion on anterior lower part of left knee joint size 1 x 1 cm, irregular in shape.

3. On internal examination Dr. Singh PW-5 found that the brain on the left frontal and temporal side was congested with intracranial haemorrhage. Throat was reddish in colour. The mouth and oesophagus were filled with bloody fluid. The small intestine was filled with gas and liquid fluid with pungent odour. Vide report Ex.P-4 Doctor Singh opined that the cause of death was coma due to head injury which was homicidal in nature.

4. After completion of investigation, the appellant was prosecuted under section-302 of the I.P.C. The accused-

appellant abjured the guilt and pleaded in defence that on returning home he did not find his wife. On the next day, he went in search of Sukwari Bai and found her lying dead on the side of road and brought her dead body home. No evidence in defence was adduced. The prosecution examined as many as 8 witnesses. The learned trial Judge relying upon the medical evidence came to the conclusion that death of Sukwari Bai was homicidal. Reliance was placed on the testimony of Losang Sirong PW-1 to conclude that the appellant was last seen with the deceased immediately prior to the occurrence and on the testimony of Pahru PW-6 in para-3 to conclude that the appellant was the author of the crime of murder.

5. Learned counsel for the appellant has assailed the impugned judgment on the ground that the evidence led by the prosecution does not bring home the guilt of the appellant for an offence under section-302 of the I.P.C. beyond reasonable doubt. He also placed reliance on para-7 of the cross-examination of Dr. R.S.Singh PW-5 while arguing that the deceased was intoxicated and injuries sustained by her could have been caused due to frequent falls. On the other hand, learned counsel appearing for the State argued in support of the Judgment of the trial Court.

6. We have heard the rival contentions and also perused the record of Sessions Trial No. 311/95. Dr. R.S.Singh, Assistant Surgeon PW-5 has proved the injuries sustained by Sukwari Bai which have been mentioned in para-2 (Supra) by us and has opined in para-5 of his testimony that death of Sukwari Bai was due to coma as a result of head injury which was sufficient in the ordinary course of nature to cause death. He has also

opined that the death of Sukwari Bai was homicidal in nature. Although in para-7 of the cross-examination it has emerged that there was some liquid in the small intestine of the deceased having a foul odour and could have been liquor, yet this by itself is not sufficient to conclude that the deceased had fallen several times while being highly intoxicated. There is nothing in the cross-examination of the prosecution witnesses to probablise that Sukwari Bai had fallen several times on the ground. Pahru PW-6 in para-3 has clearly stated that on being asked about the cause of death of Sukwari Bai, the appellant had told him that during the quarrel he had assaulted Sukwari Bai by kicks and fists due to annoyance. This testimony is wholly unrebutted in cross-examination. The testimony of Losang Serong PW-1 shows that the appellant was with the deceased Sukwari Bai shortly before she sustained the injuries and at that time the appellant was lifting her and saying that she should come home. In our considered opinion, the abovementioned unrebutted testimony of Losang Serong PW-1, Pahru PW-6 coupled with the testimony of Dr. R.S. Singh PW-5 establishes beyond doubt that the appellant had inflicted the injuries sustained by Sukwari Bai, as a result of which death of Sukwari Bai was caused. It is thus established that the appellant had caused the death of Sukwari Bai.

7. The only question which requires our consideration is as to what offence was committed by the appellant. There is nothing in the entire evidence led by the prosecution to show that the appellant had the motive or intention to cause the death of Sukwari Bai. The unrebutted testimony of Pahru PW-6 also suggests that the appellant had assaulted Sukwari Bai by kicks and fists upon annoyance. We have considered the medical evidence of

Dr. R. S. Singh PW-5 regarding the injuries sustained by Sukwaqri Bai and also the evidence of Losang Serong P.W.1. In our opinion, the evidence led by the prosecution does not establish that the accused-appellant had the requisite intention for causing the death of Sukwari Bai, though it can be safely inferred that the accused had the knowledge that the injuries sustained by Sukwari Bai were likely to cause her death.

8. Having considered the evidence led by the prosecution in its entirety, we are of the considered opinion that although the offence under section-302 of the I.P.C. is not established against the appellant, yet the requisite knowledge that the injuries inflicted by the appellant on Sukwari Bai were likely to cause her death can safely be attributed to the appellant and therefore we hold the appellant guilty under section-304 Part-II of the I.P.C.

9. In the result, the appeal is partly allowed. The conviction of the appellant under section-302 of the I.P.C. and the sentence imposed thereunder is set aside. Instead, the appellant is convicted under Section-304 Part-II of the I.P.C. and sentenced to rigorous imprisonment for 10 years. The appellant has suffered incarceration from 30-08-1995 till date i.e. for a period of more than 10 years. The appellant shall therefore be set at liberty forthwith, if not required in any other case.

Sd/-
Fakhruddin
Judge
27-09-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
27-09-2005

Satish